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4 KEVIN PRASAD,  
5 Plaintiff,  
6 v.  
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8 CARLOS BOLANOS, et al.,  
9 Defendants.

10 Case No. [20-cv-08328-JST](#)

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28 **ORDER OF DISMISSAL**

Plaintiff, a pretrial detainee at Maple Street Correctional Center (“MSCC”), in Redwood City, California has filed a *pro se* action pursuant to 42 U.S.C. § 1983. His amended complaint (ECF No. 18) is now before the Court for review under 28 U.S.C. § 1915A. For the reasons set forth below, the amended complaint is DISMISSED with prejudice.

**DISCUSSION**

A. **Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See United States v. Qazi*, 975 F.3d 989, 993 (9th Cir. 2020).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not necessary; the statement need only “give the defendant fair notice of what the . . . claim is and the

1 grounds upon which it rests.”” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).  
2 While Rule 8 does not require detailed factual allegations, it demands more than an unadorned,  
3 the-defendant-unlawfully-harmed-me accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009).  
4 A pleading that offers only labels and conclusions, or a formulaic recitation of the elements of a  
5 cause of action, or naked assertions devoid of further factual enhancement does not suffice. *Id.*  
6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a  
7 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
8 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487  
9 U.S. 42, 48 (1988).

10 **B. Amended Complaint**

11 The amended complaint again names as defendants San Mateo County Sheriff Carlos G.  
12 Bolanos, San Mateo County Undersheriff Mark C. Robbins, San Mateo County Assistant Sheriff  
13 John W. Munsey, San Mateo County Captain Kristina Bell, and San Mateo County Lieutenant  
14 John Kovach.

15 The amended complaint makes the following allegations relevant to Plaintiff.<sup>1</sup>

16 Prior to COVID, MSCC inmates were allowed face-to-face visits if they were part of a  
17 program or were kitchen workers. In March 2020, Governor Newsom issued a stay-at-home order  
18 in response to the COVID-19 pandemic. In accordance with this order, San Mateo County  
19 cancelled all visits. At that time, San Mateo County had allowed face to face visits and was using  
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21 <sup>1</sup> Plaintiff again complains generally of alleged jail policies with which he disagrees, such as  
22 housing deputies turning off video visiting systems during inmate recreation hours and a failure to  
23 update jail computers so that they can properly run the Smart Jail Mail Video Visiting System.  
24 However, Plaintiff does not specify how these policies have violated his constitutional rights. The  
25 Court cannot consider Plaintiff’s general concerns about how Maple Street Correctional Center is  
26 run or how the video software has, at times, failed for other inmates. Plaintiff lacks standing to  
27 seek relief for injuries that he has not suffered. *See, e.g., Fleck & Assocs., Inc. v. Phoenix*, 471  
28 F.3d 1100, 1104 (9th Cir. 2006) (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985)  
(under prudential limitations of standing, litigant must normally assert his own legal interests  
rather than those of third parties). Nor can the Court issue declaratory judgments to address  
Plaintiff’s general concerns. *See, e.g., MEIC v. Stone-Manning*, 766 F.3d 1184, 1188 (9th Cir.  
2014) (declaratory judgment action must be ripe for review, which depends on whether under all  
the circumstances, facts show: (1) substantial controversy, (2) between parties having adverse  
legal interests, (3) which are of sufficient immediacy and reality to warrant issuance of declaratory  
judgment).

1 the Renovo Video Visiting System. In response to a June 2020 MSCC inmate hunger strike to  
2 protect commissary prices and the cancellation of visits, MSCC replaced Renovo Video Visiting  
3 System with Smart Jail Mail Video Visiting System, which allowed visitors to visit inmates  
4 remotely from their home, as long as they had hardware that could run the software and had the  
5 necessary plug-ins. The Smart Jail Mail Video Visiting System requires visitors to be  
6 knowledgeable about computers and capable of troubleshooting.

7 Plaintiff had visits scheduled with family members on July 27, 2020, and August 24, 2020.  
8 Both these visits did not take place because Plaintiff's family members' computers kept returning  
9 the error message: "cannot load plug-in."

10 Plaintiff also alleges that the jail computers likely do not have the hardware necessary to  
11 consistently run the Smart Jail Mail Video Visiting System, based on his observations that (1) at  
12 any given time, one or two of the video visiting stations in each housing unit is not working, and  
13 (2) the software has crashed or frozen during visits.

14 Plaintiff alleges that the continued use of the Smart Jail Mail Video Visiting System  
15 constitutes cruel and unusual punishment in violation of the Eighth Amendment because the lack  
16 of visits is harmful to his physical and mental health, and to his safety. Plaintiff requests  
17 declaratory and injunctive relief in terms of implementation of various policies that he believes  
18 would allow for more consistently successful video visits and allow for MSCC to safely and  
19 effectively resume in-person visits, including reopening the lobby, returning to the Renovo system  
20 or using Zoom, updating jail computers' hardware, and a policy requiring housing deputies to  
21 allow inmates to access video visiting stations during recreation time.

22 **C. Analysis**

23 Because Plaintiff is a pretrial detainee, his claim is properly brought under the Fourteenth  
24 Amendment, and not the Eighth Amendment. When a pretrial detainee challenges conditions of  
25 his confinement, the proper inquiry is whether the conditions amount to punishment in violation of  
26 the Due Process Clause of the Fourteenth Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535  
27 n.16 (1979). The state may detain a pretrial detainee "to ensure his presence at trial and may  
28 subject him to the restrictions and conditions of the detention facility so long as those conditions

1 and restrictions do not amount to punishment or otherwise violate the Constitution.” *Bell*, 441  
2 U.S. at 536-37. If a particular condition or restriction of pretrial detention is reasonably related to  
3 a legitimate governmental objective, such as maintaining jail security and order, the condition  
4 does not, without more, amount to punishment. *See id.* at 539-40. To determine whether a  
5 particular condition or restriction of pretrial detention amounts to punishment in the constitutional  
6 sense of the word, the court first looks to whether the disability imposed is for the purpose of  
7 punishment or whether it is but an incident of some other legitimate governmental purpose. *See*  
8 *Bell*, 441 U.S. at 538. Absent a showing of an express intent to punish, whether a condition or  
9 restriction amounts to punishment generally will turn on whether there is an alternative, rational  
10 purpose for the condition/restriction, and whether the condition/restriction appears excessive in  
11 relation to that alternative purpose. *See id.*

12 The continued use of the Smart Jail Mail Video Visiting System fails to state a cognizable  
13 Fourteenth Amendment claim. Plaintiff has not alleged, and the factual allegations do not support,  
14 that the implementation of Smart Jail Mail Video Visiting Software was the result of an express  
15 intent to punish, and the factual allegations indicate that there was an alternative, rational purpose  
16 for the implementation. The amended complaint acknowledges that the replacement of the  
17 Renovo Video Visiting System with the Smart Jail Mail Video Visiting System was not imposed  
18 for the purpose of punishment. Rather, the implementation of Smart Jail Mail Video Visiting  
19 system was an incident of the legitimate governmental purpose of abiding by Governor Newsom’s  
20 March 2020 stay-at-home order and preventing the spread of COVID which had required the  
21 cessation of both in-person visits and visits using video kiosks in the lobby. According to the  
22 amended complaint, the implementation of Smart Jail Mail Video Visiting Software was to allow  
23 visitors to visit inmates remotely. The remaining question therefore is whether the  
24 implementation of Smart Jail Mail Video Visiting Software was excessive in relation to the goal of  
25 allowing for inmate visits while abiding by Governor Newsom’s stay-at-home order and  
26 preventing the spread of COVID.

27 Plaintiff argues that the continued use of the Smart Jail Mail Video Visiting Software is  
28 excessive because it has failed both times he tried to use it, effectively denying him visits to which

he is otherwise entitled to under prison regulations. The implication is that use of the Smart Jail Mail Video Visiting Software is the equivalent of denying all inmates, including Plaintiff, video visitations. However, Plaintiff has only described two instances where the video system failed and both times it was because his family members' computers were unable to load a necessary plug-in.<sup>2</sup> According to the amended complaint, other inmates have been able to use the Smart Jail Mail Video Visiting Software. Plaintiff describes inmates facing challenges consistently using Smart Jail Mail tablets and the video visiting stations, but does not allege that the Smart Jail Mail Video Visiting Software fails so reliably and frequently as to constitute a complete denial of visits. Given that other inmate visitors are able to successfully complete video visits, it is unreasonable to assume from two instances, both times presumably using the same computer, that the inability to load the plug-in was solely due to the Smart Jail Mail Video Visiting Software or that troubleshooting this error is beyond the ability of most inmate visitors. Plaintiff's allegations regarding his two instances of inability to conduct visits using the Smart Jail Mail Video Visiting Software do not lead to a reasonable inference that the continued use of the Smart Jail Mail Video Visiting Software is excessive in relation to the goal of preventing COVID and constitutes punishment in violation of the Fourteenth Amendment. *See, e.g., Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level.") (citations omitted).

The amended complaint will be DISMISSED for failure to state a cognizable Fourteenth

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<sup>2</sup> Plaintiff has also made other allegations about problems with the Smart Jail Mail Video Visiting System, namely that he believes that the jail computers/video visiting stations are unable to consistently run the software since he sees one or two stations non-operational at any given time and the software often crashes or freezes, and that the wi-fi system is not robust enough to allow easy use of the Smart Jail Mail tablets. Plaintiff has not personally experienced these issues so lacks standing to sue on the grounds that these issues may impact his later visits. *See Trump v. New York*, 141 S. Ct. 530, 534 (2020) (foundational principle of Article III standing is that actual controversy must exist not only at time complaint is filed, but through all stages of litigation; plaintiff must demonstrate that case is ripe, not dependent on contingent future events that may not occur as anticipated, or may not occur at all). In addition, these allegations do not establish that the Smart Jail Mail Video Visiting Software does not work at all. Whether a video visiting station is functional cannot be attributed solely to the software. A problem with wi-fi coverage does not establish that the continued use of the Smart Jail Mail Video Visiting Software is punitive. Finally, assuming that the video visiting stations often freeze or crash while running this software also does not establish that the use of this software is punitive given the necessity for restrictions on prison movement and outside contact due to COVID-19.

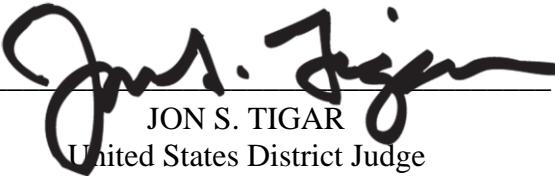
1 Amendment claim. This dismissal is with prejudice because leave to amend would be futile.  
2 Plaintiff has previously been granted leave to amend, and the crux of his allegations – that the  
3 continued use of the Smart Jail Mail Video Visiting System violates the Fourteenth Amendment  
4 because his family members were twice unable to use it – fails to state a cognizable Fourteenth  
5 Amendment claim. *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010) (district  
6 court may deny leave to amend if it determines that allegation of other facts consistent with  
7 challenged pleading could not possibly cure deficiency).

8 **CONCLUSION**

9 For the foregoing reasons, the Court DISMISSES this action for failure to state a claim.  
10 All pending motions are DENIED as moot. The Clerk shall enter judgment in favor of Defendants  
11 and against Plaintiff, and close the case.

12 **IT IS SO ORDERED.**

13 Dated: September 20, 2021



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15 JON S. TIGAR  
16 United States District Judge  
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